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22 UNITED STATES DISTRICT COURT  
23 SOUTHERN DISTRICT OF CALIFORNIA

24 PHU LE,

25 Plaintiff,

26 vs.

27 NICHOLAS W. BELLENBAUM; AVIS, INC.  
28 dba AVIS RENT A CAR; AND DOES 1 TO  
29 20,

30 Defendants.

Case No.

EX PARTE APPLICATION FOR AN  
ORDER ESTABLISHING TIME TO  
RESPOND TO PLAINTIFF'S  
COMPLAINT

Removed from Superior Court of California  
County of San Diego  
Case No. 37-2008-00085095-CU-PA-CTL

31 Pursuant to Fed. R. Civ. P. 6(b)(1), it is requested that the Court issue an order specifying the  
32 time for response to the Complaint filed in this action, which was removed from state court on  
33 August 19, 2008.<sup>1/</sup> Plaintiff's Complaint purports to raise personal injury tort claims.

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37 <sup>1/</sup> Such an order is authorized under Federal Rule of Civil Procedure 6(b)(1), which provides  
38 discretionary authority to enlarge time "with or without motion or notice. . . ." Authority to enlarge time naturally  
39 encompasses the power to designate the proper time for response to a complaint.

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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

'08 CV 1522 WQH BLM

1 The Complaint was removed from the state action to this Court, and at the same time it was  
 2 Certified that the federal employee Defendant was acting within the scope of his employment at the time  
 3 of the incidents alleged in the Complaint. Accordingly, under the provisions of 28 U.S.C. § 2679(b)(1),  
 4 the United States will be substituted for the federal employee Defendant as to the tort claims therein,  
 5 which will be adjudicated under the Federal Tort Claims Act, 28 U.S.C. 1346 (b), et. seq.

6 Ordinarily, in an action originally filed in United States District Court against the United States,  
 7 the time for response to a complaint against the United States is set forth in Fed R. Civ. P. 12(a). That  
 8 rule affords "60 days after service upon the United States Attorney . . ." within which to respond to the  
 9 complaint, as opposed to the 20 days generally afforded to non-federal defendants under the Rule.

10 After removal of a state court action to a district court, a defendant ordinarily need respond:

11 [W]ithin 20 days after the receipt through service or otherwise of a copy of the initial  
 12 pleading setting forth the claim for relief upon which the action or proceeding is based,  
 13 or within 20 days after the service of summons upon such initial pleading, then filed, or  
 within 5 days after the filing of the petition for removal, whichever period is longest.

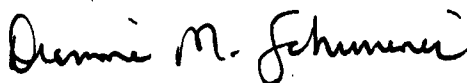
14 Fed. R. Civ. P. 81(c). Rule 81(c) does not distinguish between cases brought against federal entities and  
 15 those brought against non-federal defendants. Nor does Rule 81(c) address the circumstance of this  
 16 action where the United States does not become a party to an action until removal of the case and  
 17 certification that an individual defendant was acting in the scope of his duties as to alleged tort claims.

18 Accordingly, in order to clarify a time to respond to the Plaintiff's Complaint, and to ensure that  
 19 the United States is able to utilize its 60 days provided by Rule 12 to prepare its response, it is requested  
 20 that the Court issue an order establishing that the UNITED STATES OF AMERICA shall have 60 days  
 21 from the date of removal to respond to Plaintiff's Complaint.

22  
 23 DATED: August 19, 2008

Respectfully submitted,

24 KAREN P. HEWITT  
 United States Attorney

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 26 DIANNE M. SCHWEINER  
 27 Assistant U.S. Attorney  
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